

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-015495

01/13/2021

HONORABLE JOHN R. HANNAH JR

CLERK OF THE COURT
A. Walker
Deputy

KAREN FANN, et al.

BRETT W JOHNSON

v.

STATE OF ARIZONA, et al.

BRIAN M BERGIN

DANIEL J ADELMAN
ROOPALI HARDIN DESAI
LOGAN VINCENT ELIA
STEPHEN W TULLY
DOMINIC E DRAYE
COLIN PATRICK AHLER
TRACY A OLSON
JONATHAN RICHES
TIMOTHY SANDEFUR
KEVIN M KASARJIAN
BRAD L DUNN
DAVID E MCDOWELL
AUDRA ELIZABETH PETROLLE
DAVID ANDREW GAONA
KRISTIN ARREDONDO
JUDGE HANNAH

RULING

The Court has read and considered the plaintiffs' Request for Expedited Ruling on their Motion for Temporary Restraining Order (With Notice) and Preliminary Injunctive Relief. The expedited ruling request renews those made before and during the plaintiffs' presentation of their case for a preliminary injunction. That request will be granted as to the portion of the motion for

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preliminary relief founded on the claim that Proposition 208 unconstitutionally limits the legislature's budgeting authority. That portion of the motion for preliminary relief will be denied on the merits. The request for an expedited ruling otherwise will be denied.

Proposition 208's "No Supplant Clause"

In the written Request for Expedited Ruling, the plaintiffs focus on their concern that "Proposition 208 unconstitutionally prohibits the legislature from reducing appropriations." The reference is to the plaintiffs' arguments, in the second part of Section II(A)(3) and Section II(A)(4) of their motion, that the so-called "no supplant" clause in Proposition 208, codified at A.R.S. section 15-1284(E), improperly limits the legislature's budgeting and appropriation authority over general fund revenues.

The plaintiffs' concern about the "no supplant" provision in Proposition 208 can be addressed in short order. Simply put, the "no supplant" clause is directed at the school districts and charter schools that receive the Proposition 208 funds. It does not limit or affect what the legislature does with general fund revenues. A preliminary injunction to protect the legislature's constitutional authority is therefore unnecessary.

Statutory interpretation begins with the text of the statute, because the plain text is the best and most reliable index of a statute's meaning. *State v. Christian*, 205 Ariz. 64, 66 P.3d 1241 ¶6 (2003). The statute at issue here, the "no supplant" provision enacted as part of Proposition 208 reads as follows:

Notwithstanding any other law, the additional monies received by school districts, charter schools and career technical education districts from the student support and safety fund established by section 15-1281 and the career training and workforce fund established by section 15-1282 are in addition to any other appropriation, transfer or allocation of public or private monies from any other source and may not supplant, replace or cause a reduction in other funding sources.

A.R.S. § 15-1284(E). This directive by its terms addresses "monies received by" school districts and charter schools "from" the funds that Proposition 208 will generate. It is therefore most naturally read as a directive *to* the school districts and charter schools, addressing how they must incorporate the Proposition 208 funds into their existing budgets. The plain text further states (with emphasis added) that the Proposition 208 monies may not supplant "any other appropriation, *transfer or allocation* of public *or private* monies from *any other source*." That language, too, indicates that the statute's budgetary dictates apply to the school districts, not the legislature. Had the drafters intended to address the legislature's budget decisions, they would have referred only to the "appropriations" of "public monies" that originate from the legislative process.

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Even if the plain language of the text was ambiguous, the applicable canons of statutory construction would preclude the interpretation of the “no supplant” clause that the plaintiffs suggest. First, the presumption of constitutionality requires a court to give a statute a constitutional construction if possible. *State v. Arevalo*, 249 Ariz. 370, 470 P.3d 644 ¶ 9 (2020). If there is more than one reasonable interpretation of a statute, the judge must choose the one that avoids the constitutional issue. *Id.* Here the interpretation that “avoids the constitutional issue” is the one that construes the statute as a limit on what school districts and charter schools may do when they receive the Proposition 208 money, rather than a limit on what the legislature may do with the general fund.

Second, if a statute uses words or phrases that have a settled meaning in existing law, they should be understood according to that construction. *See Silver v. Pueblo Del Sol Water Company*, 244 Ariz. 553, 423 P.3d 348 ¶ 22 (2018) (applying analogous principle to prior agency interpretations). The intervenors point to a number of existing statutes, some enacted by the legislature, that direct school districts and charter schools not to “supplant” state funding with funding from other sources. Intervenor-Defendants’ Response in Opposition to Plaintiffs’ Motion at 16-17. The language of those statutes is not identical to the language of section 15-1284(E), but the thrust is the same. If the drafters of section 15-1284(E) had intended their law to mean something fundamentally different than what the existing laws mean, they would have made the difference a lot more clear than they did.

The plaintiffs seek support in the pre-election Supreme Court decision on Proposition 208, pointing out that the Court there described section 15-1284(E) as an attempt to address the possibility “that the legislature could effectively nullify” the additional Proposition 208 funding “by using the fact of new funding to decrease education funding from other sources.” *Molera v. Hobbs*, 250 Ariz. 13, 474 P.3d 667 § 25 (2020). That argument is disingenuous, because *Molera* was about whether ballot description of Proposition 208 improperly failed to address what the opponents of the measure claimed were “principal provisions” of the initiative. Thus *Molera* recited the meaning ascribed to the “no supplant clause” either by the initiative’s opponents (the plaintiffs here) or by the trial court in that case. The *Molera* Court did not attempt any interpretation of the statute that could serve as guidance in the present case.

IT IS THEREFORE ORDERED that the plaintiffs’ Request for Expedited Ruling is granted as to the plaintiffs’ challenge to the constitutionality of A.R.S. section 15-1284(E), the “no supplant” provision of Proposition 208.

IT IS FURTHER ORDERED that portion of the Motion for Temporary Restraining Order (With Notice) and Preliminary Injunctive Relief (set out in the second part of Section II(A)(3) and Section II(A)(4) of the motion) is denied.

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The Request for Expedited Ruling on the Other Issues

Earlier in the case, the plaintiffs took the position that an expedited ruling is necessary so that Proposition 208 does not “impact” the legislative session that convened earlier this week, on January 11. Reporter’s Transcript of Proceedings (Return Hearing) December 4, 2020 at 5. Expressing the same idea in a different way, the plaintiffs said they were “trying to get some certainty before the legislative session.” *Id.* at 11. In their motion they argued that immediate relief is necessary because allowing Proposition 208 to take effect as scheduled would introduce “chaos” and “instability” into the budget process at the State Legislature. Motion at 15, n.4; *Id.*, Exhibit 4 ¶15 (Joint Declaration of Hon. David Gowan and Hon. Regina Cobb). The Court understands this as an argument that the time and effort the legislature will have to spend required addressing Proposition 208 constitutes an injury that a court may redress through a grant of equitable relief.

Assuming for the sake of discussion that the legislator plaintiffs have standing to make this argument,¹ the Court holds that increased expenditure of time and effort that an initiative measure may cause at the Legislature cannot be a cognizable injury that weighs in favor of a preliminary injunction. “The people did not commit to the legislature the whole law-making power of the state, but they especially reserved in themselves the power to initiate and defeat legislation by their votes.” *Allen v. State*, 14 Ariz. 458, 467, 130 P. 1114, 1118 (1913). The people’s power to create legislation through initiative is therefore part of the legislative process. *Winkle v. City of Tucson*, 190 Ariz. 413, 415, 949 P.2d 502, 504 (1997). Article III (separation of powers) requires the judiciary to refrain from meddling in the workings of the legislative process. *Id.* Courts have no power to enjoin legislative functions, or to supervise legislative proceedings. *City of Phoenix v. Superior Court of Maricopa Cty.*, 65 Ariz. 139, 144-145, 175 P.2d 811, 814 (1946). The courts are equally out of place here, in the middle of what amounts to a legislative dispute between the Legislature on the one hand and the people exercising their legislative authority on the other.

The plaintiffs also argue that the State should not be required to carry “the financial burden to implement the infrastructure that Proposition 208 mandates” until the constitutionality of the income tax surcharge is decided. The short answer to this is that the State is a defendant in this case, not a plaintiff. The plaintiffs do not have standing to act on the State’s behalf. Even if they did, they would not be entitled to a preliminary injunction on this ground, because they raise the issue in the abstract without showing that the financial burden they complain about would be significant.

¹ See *Bennett v. Napolitano*, 206 Ariz. 520, 81 P.3d 311 (2006) (individual legislators do not have standing to bring a claim that the Governor’s use of the line item veto infringed the legislative power).

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Finally, the plaintiffs argue that “the income tax surcharge causes financial hardship to taxpayers” because they will have to begin making estimated tax payments soon. Policy arguments like this one are not persuasive reasons for injunctive relief, because the proponents of Proposition 208 can (and do) make mirror-image arguments, and a judge has no basis for taking sides. Beyond that, the plaintiffs’ hardship claim is factually flawed, because a taxpayer can satisfy the prepayment obligation through payments based on the taxpayer’s 2020 income tax liability – on which Proposition 208 had no effect. A.R.S. § 43-581(A). And a court has no authority to issue an injunction to prevent or enjoin collection of a tax in any event. A.R.S. § 42-11006(2); *see Bailey v. George*, 259 U.S. 16, 42 S.Ct. 419 (1922) (construing federal anti-injunction statute to prohibit injunctive relief from a tax imposed by an allegedly unconstitutional statute).

IT IS THEREFORE ORDERED the plaintiffs’ Request for Expedited Ruling is denied except as otherwise set forth above.

The Court will nevertheless do its best to issue the balance of the ruling Motion for Temporary Restraining Order (With Notice) and Preliminary Injunctive Relief shortly. But it will do so because of the priority afforded motions for preliminary injunctions under the Rules of Civil Procedure, and as a courtesy to the parties, not as an effort to adhere to a schedule based on the business of the legislature.